

North Smithfield Zoning Board of Review

May 22, 2012, 7:00 pm

Kendall Dean School

83 Green Street, Slatersville, RI

The Chair called the meeting to order at 7:00 pm.

1. Roll Call

Present: Chair Stephen Kearns, Steve Scarpelli, Bill Jühr, Guy Denizard, Paul Pasquariello, Mario DiNunzio, Scott Martin. Also present were Building Official Bob Benoit and Assistant Solicitor Bill Savastano.

2. Disclosure of no compensation or pension credits received by the board members.

3. Approval of minutes, May 8, 2012.

Mr. Jühr made a motion to approve the minutes of May 8, 2012, as corrected. Mr. Scarpelli seconded the motion, with all in favor.

4. Application of Kimberly Enterprises, Inc., requesting a dimensional variance for lot frontage, per section 5.5, "District Dimensional Regulations," subsection 5.5.1, "Residential Districts," and a variance from Section 6.2, "Street Access to Buildings." Locus is off Sayles

Hill Road, Plat 17, Lot 236, Zoning: RS-40.

Mr. Pasquariello recused from this application, due to an indirect business relationship with the applicant. Because there was no other business on the agenda, he left the meeting at 7:09 pm.

The Chair opened the hearing by informing the applicant of the standards for review, according to section 9.3.2 of the Zoning Ordinance. He also stated that Mr. Martin will be voting on this application in place of Mr. Pasquariello.

Philip Godfrin, president of Kimberly Enterprises, was sworn in by the stenographer. He stated that the lot was granted a variance by the Zoning Board on December 17, 1996, but it has since lapsed since he did not get started with construction on the lot within a year. He would like the Board to renew the variance. He stated that he had a copy of that decision to enter into the record. At that point, the Chair entered the following exhibits into the record. This list is all the materials that were submitted to the Board as part of the application, and the Board had the full two weeks to review the materials.

P1) Application for a Certificate of Zoning Compliance, April 24, 2012

P2) Letter from Philip Godfrin, April 24, 2012

P3) List of abutters and radius map

P4) Plot Plan of the general area (portion of assessor's plat 17)

During the course of the meeting, the following exhibits were also submitted for the record:

P5) Copy of the original division of land for this lot, recorded on May 1, 1968

P6) Change of title/deed history for the lot, from 1968 to acquisition by the applicant

P7) Letter from former Town Planner Michael Phillips, June 21, 1996

P8) Letter from Planning Board to Philip Godfrin, referring him to the Zoning Board, July 19, 1996

P9) OWTS design, single-family home septic system, prepared by Norbert Therien, June 2008

P10) Letter from Mr. Authier, April 24, 2012, stating agreement to increase the right of way to 16' wide, if approved by the Zoning Board.

P11) letter from Fire Marshal Brian Gartland, May 21, 2012, stating that one additional house could be added to the current driveway and a 16' right of way would be acceptable for fire department access

P12) letter from DPW director, re: improving right of way, December 3, 1996

P13) Approval of application by the Zoning Board of Review, December 17, 1996

The Board also entered one exhibit during the hearing:

B1) GPS of area, aerial view of existing houses, printed by Mr. Denizard from Google Earth

Mr. Juhr stated that the original set of materials submitted with the

application was sparse on information that helps the Board decide on reasons to approve the application. He stated that the materials should be submitted before the hearing, in order to give the Board time to adequately review the information. Mr. Denizard and other members of the Board agreed that the original application was lacking in information, and that large amounts of information submitted during the hearing make it difficult for the Board to be able to make a decision.

Mr. Godfrin handed out copies of P5, showing the subdivision of the land in 1968. He stated that he owns only lot 236 of the subdivided land. The lot meets or exceeds all RS-40 requirements, but lacks frontage on a town improved street. He then submitted P6, a chain of title for the lot, which Mr. Godfrin purchased in 1997. Written in the deed is the right to use the existing right of way to access the land. He had applied for a building permit in 1996, but was denied because there was no frontage on a town street. At that time, Mr. Godfrin had many discussions with the Town Planner and the Planning Board. The Planning Board Chair referred him to the Zoning Board of Review to apply for a variance. Mr. Godfrin submitted P7 and P8 to support this.

In 1996, the applicant appeared before the Zoning Board for a variance. At that time, he also applied for DEM approval of the septic design. He had this design reviewed again by DEM and in June 2008 received approval for OWTS design for a single-family home. He

submitted P9 as evidence.

Mr. Denizard stated that in P5, the right of way is listed as 12 feet wide. That width cannot accommodate a fire truck. Mr. Godfrin stated that much of the discussion at the 1996 Zoning Board hearing focused on the width of the right of way. He said it is unfortunate that he does not control the right of way, and that he has offered to buy this land, but has been refused by Mr. Authier. He submitted P10, a letter in which Mr. Authier stated that he will agree to increase the width of the right of way to 16 feet, if the Zoning Board grants the requested variance. Mr. Denizard asked about the maintenance of the road. Mr. Godfrin said he would come to terms with the owner to have it plowed and maintained.

Mr. Jühr asked if Mr. Godfrin would be living in the house that would be built there. Mr. Godfrin stated that he would not. Mr. DiNunzio asked if there were houses on the abutting lots. Mr. Denizard had an aerial GPS photo that he printed from Google Earth that showed that the abutting lots do not have houses. This was entered into the record as B1. Mr. Godfrin stated that the right of way is currently only paved for about 300 feet. It would be extended down to the lower property line of lot 236, which was what the Zoning Board approved in 1996. Mr. DiNunzio stated that P10 doesn't state a commitment by Mr. Authier to widen the right of way, but rather a commitment to consider widening it if the Board grants the variance. Mr. Godfrin stated that the right of way is part of lot 216 (owned by Mr. Authier),

and he has agreed to let people drive on it. He will not agree to sell the land so that a town road can be built. Mr. Godfrin stated that the current proposal is the best he has been able to come up with, with what is available to him, and without a variance, the lot is useless. Mr. Jühr asked Mr. Godfrin if he paid for the agreement with Mr. Authier to widen the right of way. Mr. Godfrin stated that he did not.

Mr. Jühr stated that he is wary of setting precedence, as there are many lots in town on unimproved streets. If the Board grants the variance, he stated that they would be exacerbating the situation. The Chair stated that the problem is that the lot is a non-conforming lot of record, and asked what else the applicant could do. Mr. Jühr replied that they could build a road. Mr. Godfrin said that he does not control the right of way, and that is why he is here. He stated that his only recourse to use the land is with the Zoning Board. He regrets not using the land in 1996, but it doesn't change his circumstances. Mr. Jühr stated that since 1996, the character of the town has changed and there is a new Comprehensive Plan and new regulations to consider. Mr. Godfrin again stated that the right of way is the only access to the lot, so he needs the variance. Mr. Jühr replied that he knew that when he bought the lot and that it wasn't buildable. He added that building solely for financial gain is against the Board's criteria. Mr. Godfrin stated that it doesn't conform to 6.2, and he has no alternative. Without a variance, the lot is rendered useless. He said that in 1996, the Zoning Board was attempting to make the best situation out of a bad situation. With this variance, the right of way

will start to look like a roadway.

Mr. Godfrin stated that he had spoken with the fire department, and submitted P11, a letter in which the fire marshal states that widening the right of way to 16 feet will be adequate for fire truck access for one additional house. The Chair stated that the other abutting lots would not be able to build. Mr. Godfrin stated that they could approach the fire department when they are ready to build to get further recommendations.

Mr. Jühr asked Mr. Godfrin if he had approached the Town Planner about putting in a road to benefit all the owners. Mr. Godfrin stated that he had done so in 2006 and other times since then, but there is no mechanism to make Mr. Authier turn over the right of way.

Mr. Jühr stated that he didn't see the hardship. He said that Mr. Godfrin wants to make a profit and sell a house and that he bought the lot knowing about the 12' driveway. Mr. Godfrin stated that he still has the right to ask, since the property is useless without the variance, since Mr. Authier is unwilling to sell the right of way. The Chair stated that the remaining lots on the right of way, beyond Mr. Godfrin's property need to be considered. He stated that the Board is put in a difficult situation. Mr. Godfrin submitted P12, a 1996 letter from the DPW director discussing the improvement of the right of way. Mr. Jühr again asked why all these materials were not submitted before the meeting.

Mr. Denizard stated that the right of way extends from lot 216 to lot 116 (the ski shop on Eddie Dowling Highway). He asked if there was any connection between the owners of those two lots. Mr. Godfrin stated that there was not. He also stated that the ski shop bought the adjacent lot and merged them. He pointed this out on P5. He then passed out copies of P13 and apologized for submitting all the materials at the hearing. He stated that he was in a hurry to get his application in because of the advertising requirements. He said that his only recourse for use of his land is the variance; otherwise he has no beneficial use of his property. He said he recognizes that the situation is not ideal, but there is no alternative since he does not control the right of way. He is attempting to make the best of a bad situation by paving the right of way to make it look and act like a street. He said he can't predict what will happen with the other lots, but they will have to come here to get approval to further extend the right of way and little by little it will appear as a road. He concluded by stating that he humbly requests consideration of his plight and that the Board will grant the variance.

The Chair asked Mr. Savastano for clarification of "financial gain," since anyone in the business of development is in it to make money. He questioned why this was included in the ordinance. Mr. Savastano read that portion of the ordinance and also pointed out that the hardship has to be more than a mere inconvenience. He said he can see the conflict. He stated that the Planning Board directed the

applicant to the Zoning Board, whether or not the original subdivision was questionable, and the Board has to decide whether the applicant is denied beneficial use of his property. The Chair said that he struggles with this concept. Mr. Savastano also questioned why Mr. Authier was not here. He stated that he is controlling the Board to some extent and that he would rather see a firm commitment on widening the right of way. He said there could be a snowball effect with the other lots, and suggested that the Board study the exhibits, to deliberate, and look at all the evidence.

Mr. Denizard stated that the 16' right of way should be shown on the plans. Mr. Savastano stated that he would like to see Mr. Authier here to testify and answer questions. Mr. Scarpelli asked Mr. Godfrin if he knew when he bought this piece of property that it was a gamble, since it required special exemption to make it buildable. Mr. Godfrin said that was correct, but that the lots are recognized the lots and included them on the assessor's plat maps. He added that this is not the only time this has happened in North Smithfield. He said that he knew the issue when he bought the lot, but he also knew that there was a mechanism for relief through the Planning or Zoning Board. He said that the Authiers will only agree to widen the right of way; they will not sell the land. He also wishes they would speak to the Board, but he said he can't make them testify, and he can't get them to agree to anything other than widening the road.

The Chair stated that in light of the many materials that the Board has

not had time to review, he will have to wait to make a decision. Mr. Godfrin said he was done with his presentation and there was no one from the public present at the meeting. The Chair stated that he will be moving, and if he is not here at the next meeting, Mr. DiNunzio will vote in his place. He requested additional copies of all the exhibits be sent to Mr. Benoit for distribution to the Board and the clerk.

Mr. Scarpelli made a motion to continue the application to June 12, 2012. Mr. Juhre seconded the motion. Mr. Juhre also stated that the applicant shall not present further information at the June 12 meeting. The continuation is in order for the Board to have adequate time to review the materials submitted this evening. All members voted in favor of the motion.

Mr. Scarpelli made a motion to adjourn at 8:45 pm. Mr. Kearns seconded the motion, with all in favor.